

October 31, 2003

SUBMITTED ELECTRONICALLY AND BY MAIL

Ms. Barbara Cunningham
Director, Environmental Assistance Division (7408M)
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C 20460

Re: National Pollution Prevention and Toxics Advisory Committee
E-Docket No. OPPT-2002-0001

Dear Ms. Cunningham:

I represent People for the Ethical Treatment of Animals ("PETA") as in-house legal counsel in the Research and Investigations Department. I am writing on behalf of PETA to comment on the National Pollution Prevention and Toxics Advisory Committee ("NPPTAC" or "the Committee"). Please include this letter in E-Docket No. OPPT-2002-0001. Also, we request that this letter be circulated to all of the members of the Committee at the meeting scheduled for November 4 and 5, 2003.

On April 2, 2003, the EPA published notice in the *Federal Register* seeking nominations for members to serve on the Committee. 68 *Fed. Reg.* 16026. Potential candidates were described as individuals with "leadership experience with environmental or public health policy, or issues, or research associated with chemicals, pollution prevention, human health, or the environment in State, National or international arenas." The notice went on to list 14 areas of expertise including:

- Chemistry
- Pollution prevention
- Toxicology
- Ecology
- Environmental science
- Risk assessment
- Risk Communication
- Risk Management
- Public health
- Environmental policy
- Environmental justice
- Socio-economic analysis
- Public health policy
- Animal welfare



PETA

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ORGANIZATION DEDICATED
TO PROTECTING
THE RIGHTS OF ALL ANIMALS

Particularly noteworthy was the EPA's express request for candidates with "interdisciplinary training or experience." Those potential candidates were "strongly encouraged to apply."

On April 25, 2003, The Humane Society of the United States ("HSUS"), on behalf of several organizations with a collective membership in excess of 10 million supporters, nominated three highly qualified individuals to serve on NPPTAC, two of whom are affiliated with PETA. Ms. Jessica Sandler is PETA's Federal Agency Liaison and Mr. Troy Seidle is PETA's Science Policy Advisor. The nominating letter signed by HSUS Vice President, Dr. Martin Stephens, described the candidates as follows:

- Jessica Sandler is an industrial hygienist whose professional career has included more than four years as a senior health and safety official for the US Geological Survey, prior to which she served almost eight years as a senior industrial hygienist at the Occupational Safety and Health Administration. As Federal Agency Liaison for People for the Ethical Treatment of Animals (PETA), Jessica has been a leader in bringing animal protection considerations to the forefront of government-driven chemical-testing initiatives. Nowhere is this more evident than in her review of all test plans proposed under the EPA's HPV Chemical Challenge Program and coordination of substantive and constructive responses to assist the EPA in fulfilling its commitment to minimize the burden of this program on animals in laboratories.
- Troy Seidle is PETA's Science Policy Advisor. With an academic background in public health, he works closely with scientists in the regulatory, regulated, academic, and advocacy communities to build consensus on strategies for reducing reliance on animal-based toxicity testing while continuing to protect the environment and human health from chemical and other hazards. Through his service as a member of the EPA's Pesticide Program Dialogue Committee, and as a representative of the international animal protection community at meetings of the Organization for Economic Cooperation and Development, Troy has developed a well-earned reputation for being a team player and constructive.

Each individual is not only well-credentialed, but also has the interdisciplinary training and experience that the EPA had so "strongly encouraged." Each completed and submitted the necessary Disclosure Forms as a prerequisite for serving on the Committee.

On August 29, one of the nominees, Jessica Sandler, received a letter from HSUS Chief of Staff, Dr. Andrew Rowan. Dr. Rowan advised that he had been solicited directly by the EPA's Acting Deputy Administrator, Mr. Stephen Johnson, to serve on the NPPTAC, and that he had erroneously agreed to serve not realizing it was the very same committee to which HSUS had nominated Ms. Sandler and Mr. Seidle.

We later learned that before the EPA contacted Dr. Rowan, it had offered Dr. Martin Stephens a seat on the Committee. Dr. Stephens was approached by Ms. Susan Hazen, Acting Assistant Administrator of the EPA's Office of Prevention, Pesticides and Toxic

Substances, sometime in July 2003. Dr. Stephens appropriately declined, endorsing the nominations that HSUS had officially submitted.

The candidates nominated by HSUS received rejection letters in early October. The letters noted that members of the Committee were selected on the basis of “technical expertise, work experience and contribution to a balanced representation of stakeholder perspectives.” The letter also confirmed that NPPTAC was “established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.” At this juncture I would point out that FACA requires that an advisory committee be not only balanced in terms of points of view, but also that it “not be inappropriately influenced by the appointing authority...” 5 U.S.C. App. §5(b)(3).

After the rejection letters were received, Dr. Rowan sent a letter dated October 21, 2003 to Mr. Charles Auer outlining the facts as detailed above. Dr. Rowan’s letter stated that he was “increasingly disturbed” by the EPA’s “roundabout process of extending the invitation” to serve on the Committee. Dr. Rowan further advised that his willingness to serve on the Committee was conditioned upon Ms. Sandler and/or Mr. Seidle being appointed as well.

PETA had hoped that the EPA would respond to Dr. Rowan’s letter¹ by rectifying its discreditable actions and offering Ms. Sandler and/or Mr. Seidle membership on NPPTAC. However, as of the date of this letter, we are not aware of any response from the EPA to Dr. Rowan’s letter. Moreover, PETA did not submit these written comments for circulation to the Committee members by October 27th in the hope that the EPA would suitably resolve the situation. Hence, we request that this letter, along with Dr. Rowan’s of October 21st, be circulated among the Committee members for their review and consideration at the first meeting.

PETA wishes to be on record that the EPA has completely undermined the integrity of the nomination process. The EPA’s offering seats on NPPTAC to Dr. Martin Stephens and then to Dr. Andrew Rowan, officers of the very organization that nominated Ms. Sandler and Mr. Seidle, constitutes a perversion of the nominating process. The EPA’s action in circumventing the officially announced *Federal Register* nominating procedure, makes a mockery of the process and the concept of transparency in government.

The EPA’s actions belie its claims to be unbiased and in compliance with Section 5 of the Advisory Committee Act. As Dr. Rowan observed in his October 21st letter, “their [Ms. Sandler’s and Mr. Seidle’s] expertise in the animal welfare aspects of the various EPA OPPT programs is too valuable to ignore.” If, as it appears, officials of the EPA intentionally bypassed the nominating process to hand-pick members of their choosing, the Committee has been both unlawfully constituted and improperly influenced by the appointing authority.

¹ Dr. Rowan’s October 21, 2003 letter is not listed on the E-Docket relating to NPPTAC. A copy, therefore, is attached to the mailed copy of this letter.

We would appreciate either a prompt response to this letter or the retroactive appointment to the Committee of some or all of those individuals officially nominated by HSUS in accordance with the nominating procedure.

Very truly yours,

Susan L. Hall
Legal Counsel

SLH/pc
Enclosures
cc: Dr. Andrew Rowan